

The Honorable Amy L. Comstock  
Director  
U.S. Office of Government Ethics

State of OGE

Meeting of the Interagency Ethics Council  
Washington, DC  
September 5, 2002

## INTRODUCTION

Good afternoon everyone! I am pleased to have this opportunity to meet with you a second time in as many months to talk about our ethics program. As you know, I place a high value on continuous communication within the ethics community so I want to thank the IEC, and especially Steve Epstein and Pat Carney, for again making this forum available to me.

Today, I'm going to provide an overview of the "State of OGE" -- highlights of projects that are currently underway, as well as an idea of OGE initiatives that you should expect to hear about in the coming year or two. But before we get into the details of specific projects, I want to talk about some of the larger challenges that the ethics program faces in today's environment and suggest some ways that you, as ethics officials, can promote a stronger ethical culture within your agencies.

## NEW ETHICS ENVIRONMENT

We are all well aware of the heightened attention to the ethics of organizations and their leaders that has resulted from the recent corporate scandals. There has been extensive public discussion about the causes of these scandals and about what is needed to promote business ethics. Some recent op-ed pieces, for example, have taken business schools to task for a failure to give business ethics a serious place in the MBA curriculum. The public response to the scandal has been a loss of confidence in the stock market and an awakening to the concept that business leaders should be held accountable for their own behavior. We have already seen a legislative response to the problem in the form of new legal standards for the accounting industry.

But, for those of us in government, this is a familiar story. In the 30 years since Watergate, we have seen a series of legislative reforms that have sought to preserve government integrity and regulate the conduct of executive branch employees. Today, we have a comprehensive legal regime to prevent conflicts of interest and other misconduct. But while this system of laws and regulations does hold public officials and employees accountable for meeting certain minimum standards, it is not enough in itself to achieve our goals of ensuring ethical behavior by executive branch employees and earning public confidence in government leaders.

The issues raised by Enron, Arthur Anderson, and Worldcom have reinforced in my mind the importance of some of the larger concerns that I have been talking about since I started this job nearly two years ago. There is a need to go beyond observance of the letter of the law, if institutions and organizations, whether in government or the private sector, are to be seen as both ethical and effective. I am convinced that those of us who work in the ethics program have an important role to play in meeting this challenge to go beyond what is legally required in order to strengthen the ethical culture in our organizations.

### Ethical Leadership

I have often said that strong ethical leadership is the key to building a vibrant ethical culture within our agencies. Ethical leadership means that career and non-career government executives not only observe ethical standards themselves but also take active, visible steps to make ethics an integral part of the agency's programs and operations.

As ethics officials, you can play a special role in fostering ethical leadership within your agency. In seeking support from agency heads for the ethics program, it is important for an ethics official never to lose sight of the agency mission. I will discuss this more later on, but at this point, suffice it to say that an ethics official must care as much about the agency mission as the senior leadership does.

I have also often stressed the important role that first and second line supervisors play in creating a positive ethical culture within an agency. Employees often turn directly to their supervisor for solving a whole host of workplace problems -- some of which involve ethics issues. Supervisors can play a strong ethics leadership role by being receptive to employee questions about ethics and by taking steps to integrate ethics into the daily decision-making within the office. Currently, we are working on a course targeted toward first and second line supervisors and their responsibilities for the ethics program. I would encourage you to consider reaching out to supervisors to help them appreciate their responsibility for supporting the ethics program.

### Ethics Rules and Ethics Principles

As ethics officials we also need to spend more time talking to our employees about the general ethical principles that underlie our laws and rules. One concern that I had when I came to OGE was that a heavy emphasis on compliance with ethics rules, while important, creates a number of risks for the program. One risk is that people can fall into the trap of thinking only about the rule itself, forgetting about the general principles on which the rule is based.

An exclusively compliance-oriented program also runs the risk of assuming that the rules are where ethical decision making stops. Our rules set minimum standards of behavior. They were never intended to replace good judgement and executive level decision-making. Some of the most difficult issues that ethics officials must counsel on are not clearly answered by the rules and involve

some level of discretion. This is where it is important to turn to the 14 principles as we counsel employees on how to fulfill the public trust.

An example of this kind of issue is the question of meetings of senior officials with representatives of private groups. OGE recently issued a memorandum discussing general principles and offering practical guidance to be used in evaluating such situations. Ethics officials play an important role in helping senior officials assess the potential for controversy in such situations and understand that the best interests of the agency may call for more than simply avoiding conduct that is prohibited by the rules.

### Ethics and Mission

Finally, as ethics officials, we must always keep in mind the relationship of ethics and agency mission. The ethics program should not be something that exists in a vacuum. Our goal is not to simply administer a set of tight regulations designed to prevent ethical mishaps in the business of government with little or no consideration given to the personal impact on the employee or the effect on agency mission. Our job is to help ensure that government services are provided to the people in an efficient, effective and ethical way.

I think we all worked very hard to take such a mission-oriented approach to the management of the program during the recent transition to a new Administration. Without sacrificing the protection from conflicts and misconduct that our ethics laws and regulations provide, we worked together to ensure a prompt review that facilitated the process of filling the top executive positions. We have also worked to extend this approach beyond the nominee process to other areas of the program. But we still have a lot of work to do to make the program more closely aligned with individual agency mission and less burdensome for employees.

I look to all of you as partners in bringing about this ongoing transformation of the ethics program. Your understanding of your own agency mission and your day-to-day experience in working with employees mean that you are a vital source of information and we need your involvement as we undertake various initiatives to improve the program.

### CURRENT PROJECTS

Now I'd like to talk specifically about some of those initiatives that are underway at OGE.

### Financial Disclosure Legislation

As you know, last July we proposed legislation to streamline the public financial disclosure requirements. The bill has been voted out of Committee and been placed on the Senate calendar, but it has run into a problem.

One Senator believes that the provisions of the bill are good improvements -- so good, in fact, that they should be applicable to all three branches. Our proposals were based on collective experience at OGE and people in this room and we have not analyzed whether it is appropriate for the legislative and judicial branches. While we have no particular position on the idea of expanding the bill this way, we are concerned that such an effort at this late date will stall the bill at a point when very little time remains in this Congress.

Recently, I sent an e-mail to DAEOs and Alternate DAEOs asking for their support of the financial disclosure amendments. Specifically, I have asked that they reach out to their political leadership and ask them to convey to their Senate confirming committees their support for this legislation.

It would be very helpful if your political leadership would speak with your oversight and confirming committees in support of our legislation so that if those changes get to the floor as a free-standing bill or even as an amendment to another piece of legislation, your support has been expressed.

#### Conflicts Laws Review

I'd also like to bring you up to date on the status of our review of the criminal conflict of interest laws. Many of you participated in the meetings that we had with ethics officials to hear your concerns about these statutes. Your input in this process has been extremely valuable. We have also met with representatives of non-profit government watchdog groups, employee unions, professional associations and others. And, we also have received a number of responses to our Federal Register notice seeking comment.

These meetings and the written comments that we received identified a number of areas where improvements could be made in the conflicts laws. For example, there was a near consensus that the scope of the anti-representational statutes should be narrowed for employees who do not hold senior level positions. Other recommendations that we expect to make will be along the lines that we discussed at a meeting with senior ethics officials this past June.

I think, given all this, it is fair to say that the information gathering phase of the process is now concluded. The next step is to discuss our recommendations with you. Hopefully in the next month or so, you will be hearing from us. After that, we will be discussing our recommendations with the Office of Legal Policy at the Department of Justice. We plan to have draft legislation ready for administrative clearance and introduction early in the next Congress.

We hope that the changes we are considering should make the totality of the criminal conflict of interest laws more intuitive, easier to understand and explain to employees, and more fairly administered, without creating any loopholes for conduct that is clearly detrimental to the Government.

## Technology Initiatives

Now, to turn to the area of technology and how it can help us. We continue to look for ways to use technology to reduce administrative burdens and make the ethics program more efficient.

❑ *Ethics News and Information Mailing List.* Today, we are launching an electronic notification system that will allow OGE to reach an unlimited number of ethics officials throughout the country. This means that the more than 8,000 executive-branch ethics officials can now sign up on the list server and receive news of the latest ethics developments on an immediate and regular basis. News and information disseminated via this mailing list will include DAEOfgrams, program review schedules, advisory opinions, announcements for training courses and the annual conference, vacancy announcements, Federal Register notices, and appropriate policy decisions. Additionally, OGE will post information submitted by agencies that is of interest to the whole ethics community.

I am very excited about the opportunity this list serve will give OGE to communicate with the ethics officials, many of whom are in the regions, who we don't regularly talk to and the opportunity it gives us to provide all of you with practical guidance on a timely basis.

I want to encourage you to subscribe to this mailing list. Barbara Mullen-Roth has prepared a sheet explaining the list serve in greater detail and providing subscription information. Please take one with you.

❑ *Electronic SF 278.* I am also happy to say that OGE is basically on schedule for developing an electronic version of the SF 278 financial disclosure report that can be completed, submitted, reviewed, and stored on-line with an electronic signature. The start up phase is still scheduled to be operational by October 2003. Initially, this Web-based system will be available for use by the approximately 1,200 PAS filers. The system will eventually be expanded for use by all public filers.

A small group of ethics officials have been part of our working group on this project and I thank them for their assistance. They are: John Surina (Agriculture), Janice Rodgers (Justice), Kim Hintz (DoD), Gregg Burgess (Energy), Ken Wernick (EPA), Kathleen Hooke (State), Deborah Thounhurst (State), and Dana Dyson (CIA).

## New Training Courses

As I mentioned earlier, we are developing a training course for use by agency ethics officials on "Ethics for Supervisors" that agencies can include along with their other training courses for supervisors. We are also developing an "Initial Ethics Orientation" course, designed for all new employees.

At first, both courses will be made available for use as either instructor-led or self-study courses. Later, they will also be available in both CD-ROM and web-based training formats. We

are also working with OPM to include these courses as part of their GOV Online Learning Center, which will offer these courses free to all Federal employees.

### Regulatory Activity

There are a number of regulatory projects that are underway or have just recently become effective, and I would like to mention just a few.

❑ *Waiver of Late Filing Fee, Extensions of time.* As of September 3, agencies now have the authority to grant public financial disclosure filers the additional extension of time to file that previously could be granted only by OGE. Agencies are now able to grant extensions up to a total of 90 days. Agencies also now have the authority to waive the late filing fee for public filers who submit their reports more than 30 days late, in certain circumstances and with some limitations.

❑ *209 Guidance.* We recently issued guidance on the application of 18 U.S.C. § 209 in a memorandum format rather than as a regulation. We chose the memo format in light of the review of the criminal conflict of interest statutes, which may result in changes being proposed to 209. That DAEOgram is available on OGE's web site.

❑ *207 Regulation.* We expect soon to see the long-awaited publication of the proposed 207 regulation. The proposed rule has been approved by OPM and a very few issues remain to be resolved with OLC.

❑ *Certificate of Divestiture and Blind Trust Rule.* The CD rules are currently being redrafted to streamline and clarify the existing regulation basically to put them in plain English. The blind trust rules are also being revised to eliminate redundancy and make them more user friendly. It is our thinking that the blind trust program may be useful to more people than currently use it, but we need to do our part first by explaining the program and making it useful.

### 2003 Annual Conference

Next year's conference is fast approaching -- March, to be exact. We have made a few changes to the conference format that we hope will raise the level of dialogue throughout the conference. This year's conference will feature more plenary sessions, and for the first time we will be offering a one day mini-conference program before the regular conference which is designed for new ethics officials. New ethics officials can either attend for just the one day or for both conferences. Again we hope that these changes will make the conference a valuable learning experience for even the most senior ethics officials.

### Agency Questionnaire

We are now working to revise the annual agency ethics program questionnaire to make it more useful and effective in evaluating the executive branch ethics program. We hope to have the revised questionnaire available in January, so that it covers calendar year 2003.

### SF 278 Reviewers Guide

In anticipation of passage of the new financial disclosure legislation, we have suspended our project on making revisions to the SF 278 Reviewer's Guide. However, we will make changes to the website version of the guide shortly and will notify you via the list serve when this is available.

### Government Contractor Project

OGE has underway a project to look into the question of what approaches should be taken to deal with ethics issues that are raised in the context of federal contractor personnel. OGE has done some preliminary canvassing of views of both ethics officials and private sector representatives and has received a wide range of suggestions for dealing with these issues. OGE will be sponsoring a forum for a group of ethics officials later this month to further explore ways to address this issue. This is an issue about which you will hear more in the coming year.

### Ethics Program Enforcement

Those of you who were at last month's IEC meeting know that we are looking at ways to improve ethics program enforcement. I have been working with the IG community and am very pleased by their interest in improving coordination with the our programs. OGE staff has been invited to present at a number of IG conferences, and we plan to have a session on enforcement at our annual conference which would provide an opportunity for the ethics community and the IG community to discuss this topic together. We are also planning to focus more on enforcement in our program reviews which I will discuss in a moment.

### International Outreach

In the International arena, OGE co-hosted with the Departments of State and Justice an evaluation team from the Group of States Against Corruption (GRECO) when they were in Washington in June evaluating the U.S. ethics system. We expect a report to be available at the beginning of next year and that will contain recommendations to the U.S. with regard to our anti-corruption programs, of which OGE and what we view as the ethics program is only one part.

And OGE has entered into a memorandum of understanding with Canada, Brazil, Uruguay, Chile and Argentina to develop a network of ethics agencies to share information and best practices in implementing ethics and anti-corruption programs.

## FUTURE INITIATIVES

Now, I'd like to alert you to some future OGE initiatives, several of which we hope to launch in the coming year.

### New Approach to Program Reviews

We are looking at new approaches to measuring ethics program effectiveness. We have identified some new areas that we believe will add a qualitative dimension to our agency program reviews. For example, in preparation for an agency program review, we are discussing surveying agency employees to determine how well the ethics program is reaching them and what areas need improvement, from their perspective. We also may be talking with an agency's IG staff and Human Resources office to get a better understanding of the agency's system for taking administrative action for violations of the standards of conduct and following up on a declination of criminal prosecution.

The idea is to move away from a one size fits all approach and take into consideration the entire ethics program, including the past history of program reviews in an agency, changes in the ethics staff, the size of the agency and other factors. Based on an evaluation of these factors there might, for example, be a limited review, a full scale review, a review that only examines specific issues, or no review. Whatever the level of review, it will focus on more than the systems approach that we take now and will focus more on the quality of an ethics program.

We expect to phase in this new approach when the new program review plan comes out in January.

### Overhauling the 450 System

Based on our own experience and agency comment over the years, we believe it is time to undertake an assessment of the confidential financial disclosure system. Currently, more than 250,000 executive branch employees file the OGE 450. These numbers alone suggest that a significant amount of resources are committed to this one element of the ethics program. We frequently hear from ethics officials that the administration of the 450 system consumes too much time and that the 450 is not used consistently as a counseling tool in the way that the SF 278 is.

You can be sure that you will hear from us when we begin to undertake this assessment.

### Standards of Conduct Review

With nearly ten years of experience behind us, we believe it is time to take a look at the Standards of Conduct to see how they could be improved. The timing of this review, however, is somewhat uncertain because any legislative change in the conflict of interest laws would have a significant bearing on any changes that would be made in the Standards. But it is something that you should know we are thinking about for the future.



## PROBLEM AREA

Now I want to turn to one problem area. I want to make a direct request for your diligent assistance and cooperation in ensuring that the annual and termination SF 278 reports are submitted to OGE within the required time frames and that the review process is completed in a timely fashion. Unfortunately, as of August 26, we have 35 reports that were due to be filed in 2001 that are still outstanding. We also have received only 54% of the annual 278 reports that were due to be filed in 2002.

We depend upon you to provide us with timely and complete responses to questions raised during the review of the SF 278's. This process should operate smoothly and efficiently. However, what we have found is that the OGE review process can take more than 130 days in some cases because of the need for repeated follow-up by our reviewers with their agency contact persons. Until the issues raised during a review are resolved, I cannot certify a report. I must have the assurance that the report is complete and discloses no conflicts of interest -- my certification standard is no less than yours.

For our part, we at OGE are working hard to ensure that our questions focus on those issues on the SF 278 that are essential to completeness and a meaningful conflicts review. I do understand that it is our job as well to ensure that purely technical questions are not what is causing the long delays.

I expect that some relief is in sight and that this process will be less burdensome once a revised, streamlined 278 is in use and once electronic filing is in place. But in the meantime, I would ask you to work with us to keep the entire 278 process as timely and efficient as possible.

## CLOSING

I want to close by taking this opportunity to introduce some new members of OGE's management team.

Carolyn Chapman is our new head of the Education Division. Carolyn came to us from FDIC. She has taken the lead in developing the new Ethics Training for Supervisors course and has many ideas for new and exciting training tools.

Trish Zemple is well known to many of you for her work in the ethics program and for her work with the IEC. Trish is the new head of our Program Services Division, and we are thrilled to have her.

And, I am happy with the excellent selection I made when I picked Jim O'Sullivan as my new Special Assistant. Jim is OGE's liaison with the IEC, and has been with OGE since 1992.

I want to tell you that I continue to be impressed with the dedication and energy of OGE's staff. Every single person at our agency is working hard not only to accomplish some of the new initiatives that I have talked about this afternoon, but also to ensure that our every day program activities of providing training, advice, reviews are carried out in a professional and customer-oriented manner. I could not be more pleased by and impressed with the staff at OGE.

Finally, I want to say that the one year anniversary of September 11 makes me reflect upon the special bond among members of the ethics community that was created when many of us were together in Norfolk on the day of the terrorist attacks. While I have known many of you as colleagues for many years, in those 24 hours I witnessed such caring and mutual support that it made me even more deeply aware of what wonderful human beings serve in our profession. So today I am appreciative of the honor it is to be able to share with you the important work we do to preserve the integrity of our government at such a critical moment in our country's history.